



February 27, 2001

Mr. B Abdul Ahad  
Gustav Heningburg Associates Inc  
40 Clinton St. Suite 700  
Newark, NJ 07102

Dear Mr. Ahad:

The NJEDA is pleased to provide you with the Draft Regulations and Procedures intended to implement a new program of Equitable Employment and Business Opportunity for the School Construction Program.


We have attached a set of proposed Regulations and the related Procedures for your review and comment. These drafts, together with any accepted amendments, will be presented to the NJEDA Board of Directors for their adoption on April 10, 2001. We welcome your comment, and request that it be received no later than March 23, 2001.

These Regulations and Procedures evidence the progressive policy of the NJEDA and our firm commitment to providing training and employment opportunity within the very neighborhoods that our School Construction Program will serve. They include input and suggestions received from individuals, businesses, community groups, school districts and elected officials.

Please direct any comments you may have to Mark Lohbauer, Director of Policy and Communications, at the above address; or, you may email Mark at [mlohbauer@njeda.com](mailto:mlohbauer@njeda.com).

Thank you.

Sincerely,



Caren S. Franzini  
Executive Director

MSL/sw  
Attachment: NJEDA draft Regulations and Procedures  
c: Mark Lohbauer

**DRAFT****Procedures for  
Equitable Employment and Business Opportunity  
in New Jersey Economic Development Authority  
School Facilities Projects**

The Educational Facilities Construction and Financing Act, N.J.S.A. 18A:7G-1 et seq., ("the Act") empowers the New Jersey Economic Development Authority ("the Authority") to implement the grant disbursement, construction procurement, and construction management functions established under that Act. In so doing, the Authority is directed (under Section 48 b of that Act) to adopt rules and regulations to establish an affirmative action program. This program is intended to (1) promote the hiring of women and minority workers in connection with any Authority school facilities project, and (2) expand the business opportunities of socially and economically disadvantaged contractors and vendors seeking to provide materials and services for school facilities projects.

As required by the Act, the Authority sent proposed amendments to its affirmative action regulations to the Legislature on January 9, 2001. These procedures are proposed for the purpose of implementing the intent of both the Act, and the amended regulations. On April 10, 2001, the Authority Board of Directors will consider approval of these amendments.

Terms set forth in these procedures shall have the meanings set forth in the definitions section of the regulations unless they are otherwise defined herein or the context clearly indicates otherwise.

**Section 1: Title, Application, and Policy Statement**

- 1.01:** These procedures shall be known as the "Procedures for Equitable Employment and Business Opportunity in New Jersey Economic Development Authority School Facilities Projects."
- 1.02:** These procedures shall implement the regulations set forth in N.J.A.C. 19:30-3.1 et seq., concerning Affirmative Action in Authority-managed School Facilities Projects under the Educational Facilities Construction and Financing Act (18A:7G-1 et seq.), and shall apply only to projects in a) Abbott districts; b) districts receiving 55% or more in educational aid from the State of New Jersey; c) level II monitoring districts; and d) any other school district requesting Authority management of its school facilities project.

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- 1.03:** The Authority strongly supports policies that provide equitable employment opportunities to women and minorities, particularly those residing in Abbott school districts. It is the intent of the Authority to take affirmative steps to encourage persons and firms doing business with the Authority to actively recruit, train, hire, and promote members of these groups. It is the further intent of the Authority to support the development and enhancement of socially and economically disadvantaged businesses, particularly those businesses located in Abbott school districts, through entrepreneurial training, mentoring, small business assistance programs, subcontracting incentives, and set-asides.
- 1.04:** (a) It is the policy of the State of New Jersey and the Authority to provide every employee with a workplace free from unlawful discrimination and harassment. All forms of unlawful employment discrimination based upon race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex are prohibited and will not be tolerated. Sexual harassment is a form of unlawful gender discrimination and, likewise, will not be tolerated.
- (b) Every school facilities construction contract shall contain the non-discrimination in employment on public works projects agreements required by N.J.S.A. 10:2-1, including the following:
- 1) There may be deducted from the amount payable to the contractor by EDA a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and
  - 2) The contract may be canceled or terminated by EDA, and all money due or to become due under the contract may be forfeited, for any violation of the non-discrimination sections of the contract occurring after notice to the contractor of any prior violation of these sections of the contract.

### Section 2: Definitions

- 2.01:** "Abbott district" means an Abbott district as defined in section 3 of P.L. 1996, c. 138 (N.J.S.A. 18A:7F-3).
- 2.02:** "Consultant" means any entity, other than a Contractor, that enters into a contract with the Authority for the provision of services in connection with a school facilities project.
- 2.03:** "Contractor" means any entity that enters into a construction contract with the Authority in connection with a school facilities project.

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- 2.04:** "Emerging small business" or "ESB" means an independent, construction or construction-related small business that is certified by the New Jersey Commerce and Economic Growth Commission as an emerging small business.
- 2.05:** "Minority-owned business enterprise" or "MBE" means a business that is certified by the New Jersey Commerce and Economic Growth Commission as a minority-owned business enterprise.
- 2.06:** "Performance evaluation" means the Act-mandated uniform performance evaluation of contractors on all school facilities projects managed by the Authority that must be utilized in reviewing bid submissions.
- 2.07:** "Small business enterprise" or "SBE" means a business that is certified by the New Jersey Commerce and Economic Growth Commission as a small business enterprise.
- 2.08:** "Women-owned business enterprise" or "WBE" means a business that is certified by the New Jersey Commerce and Economic Growth Commission as a women-owned business enterprise.

### Section 3: Workforce Hiring Goals

- 3.01:** Each contractor awarded a school facility Facilities contract shall insure both that it meets the minority and women hiring goals set forth in the contract for each trade or craft employed on the project and that each subcontractor meets these goals.
- 3.02:** Hiring goals shall be established by the New Jersey Department of Treasury, Division of Contract Compliance and Equal Employment Opportunity in Public Contracts, or any successor agency, and they shall be expressed as percentages of the total hours worked on the school facilities project in each trade.
- 3.03:** The performance evaluation shall reward those contractors that meet their hiring goals with workers from Abbott districts.
- 3.04:** Contractors shall comply fully with the Prevailing Wage Act, and all applicable regulations, including those pertaining to the ratio of apprentices to journeymen.

### Section 4: Workforce Training

- 4.01:** The Authority shall establish a training fund for pre-apprenticeship and apprenticeship training in trades and crafts. Each year, the Authority shall place in the fund up to one-

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half of one percent of the estimated amount of money to be allocated to construction contracts for that year, utilizing capital funds of the Act for this purpose.

- 4.02:** The Authority may provide pre-apprenticeship and apprenticeship training programs directly, may retain vendors to do so, or may utilize the services of the Department of Treasury or the Department of Labor to provide such training. All training programs receiving Authority funding shall be certified by the New Jersey Department of Education and all apprenticeship training programs shall be certified by the United States Department of Labor. To the extent practicable, the services provided pursuant to this section shall be coordinated with apprenticeship training provided under N.J.S.A. 18A:7G-38.
- 4.03:** In addition to their use in the funding of pre-apprenticeship and apprenticeship training, Authority training funds may be used for the following purposes:
- a) outreach to and recruitment of potential trainees;
  - b) the ancillary expenses of trainees, such as transportation and child care; and
  - c) monitoring of training program participants and graduates.
- 4.04:** In establishing venues for its training programs, the Authority shall, wherever possible, exercise a preference for locations within Abbott school districts in order to maximize opportunities for unemployed and underemployed women and minorities in those communities most affected by the school construction program.
- 4.05:** The Authority shall seek to facilitate placement of graduates of its pre-apprenticeship training programs in appropriate apprenticeship training programs.
- 4.06:** The Authority, either directly or through its vendors, shall undertake outreach efforts to recruit trainees and inform Abbott district residents of upcoming construction job opportunities through:
- a) local newspaper advertisements;
  - b) notices to school districts;
  - c) public presentations to community organizations; and
  - d) such other appropriate means as may be determined by the Authority or its vendors.
- 4.07:** The performance evaluation shall reward those contractors that meet their hiring goals

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with pre-apprentices and apprentices trained in programs provided by the Authority, its vendors, the Department of Treasury or the Department of Labor.

### Section 5: Emerging small business goals and set-asides

**5.01:** At such time as the New Jersey Commerce and Economic Growth Commission begins certifying emerging small businesses, the Authority may require a contractor or consultant to make a good faith effort to subcontract up to 15 percent of its contract value to ESBs. In addition:

a) the contractor or consultant that demonstrates that it will meet or exceed the ESB requirement, in whole or in part, with firms having their principal offices in the Abbott district in which the school facilities project is located shall receive additional points during the bid or proposal evaluation process.

b) the contractor or consultant that demonstrates that it will meet or exceed the ESB requirement, in whole or in part, with firms having their principal offices in any other Abbott district shall receive additional points during the bid or proposal evaluation process.

c) the contractor or consultant that demonstrates that it will exceed its contractual ESB requirement shall receive additional points during the bid or proposal evaluation process.

d) At the time of each school facilities project advertisement, the Authority shall announce the ESB requirement for the contract, as well as the additional evaluation points associated with each of the extra efforts described in Subsections 5.01 (a) - (c) above.

**5.02:** Each contractor and consultant shall make good faith efforts to contract with ESBs. Such efforts shall include, but not be limited to, the following measures:

a) sending solicitation letters to prequalified ESB firms on a list that is available from the Authority;

b) making follow-up telephone calls to firms solicited in sub-paragraph (a), above, and keeping a log of such calls and responses;

c) breaking the work into smaller subcontracts, to make it easier for small firms to compete;

d) contacting community groups, including but not limited to groups listed by the Authority for this purpose, for assistance in identifying ESB firms;

e) placing advertisements in local newspapers, construction trade letters, magazines, or special publications aimed at ESBs;

f) negotiating in good faith with interested ESB subcontractors, so as not to disqualify a prospective subcontractor without good cause;

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g) assisting potential subcontractor firms by acting as a reference for the subcontractor, or by referring the subcontractor to the surety agent or bank officer of the contractor or consultant to satisfy bonding, insurance, or credit requirements; and

h) only requiring bonds of ESB subcontractors, when bonds are required of other subcontractors.

**5.03:** The Authority may designate a school facilities construction or consultant contract to be awarded as an ESB contract, whenever there is a reasonable expectation that bids or proposals may be obtained from at least three qualified ESBs capable of providing the desired services at a fair and reasonable price. The designation shall be made prior to the advertisement for bids.

**5.04:** When practicable, the Authority will issue several smaller contracts, in place of one large contract, in order to make it easier for ESBs to compete with non-ESBs.

### Section 6: Emerging small business reporting and outreach requirements

**6.01:** Each contractor and consultant shall designate an Affirmative Action Officer, who will be responsible for maintaining all records required by these procedures. That obligation will include the completion of the following forms:

- a) "Affirmative Action Certificate," confirming the contractor's filing status, to be submitted at the time of bidding, on the form provided herein as Appendix 1;
- b) "Bidding Report," identifying potential subcontractors of the bidder, to be submitted to the Authority prior to contract award, on the form provided herein as Appendix 2;
- c) "Certified Payroll Report," indicating the race, gender and hours worked by each trades person during a pay period, to be certified by the contractor and filed within ten days of the end of each pay period, on the form provided herein as Appendix 3; and
- d) "ESB/M/W/SBE Participation Report," to be filed with the Authority by the tenth day of each month in the form provided herein as Appendix 4.

### Section 7: ESB business assistance initiatives of the Authority

**7.01:** The Authority shall implement and monitor a program in which prequalified contractors that assist ESBs in developing the experience necessary to enable them to compete with non-ESB firms will be either rewarded through the performance evaluation process or given additional points during the bid or proposal evaluation process. Mentoring programs developed under this section shall be evidenced by an agreement to be prescribed by the Authority and executed by the contractor or consultant.

**7.02:** The Authority shall conduct, either directly or through vendors, entrepreneurial skills training programs to assist ESB firms to compete for contracts for school facilities

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projects.

- 7.03:** The Authority shall establish a performance bond and financial guarantee program to assist ESB firms in the obtainment of such bonds.
- 7.04:** The Authority shall consider the implementation of a wrap-up insurance program to reduce the overall cost of insurance on a project, and to assist ESB firms that might otherwise have difficulty securing necessary insurance.
- 7.05:** The Authority shall seek to create, with the assistance of the banking industry, a School Contractors Capital Access Program ("SCCAP") for the benefit of prequalified ESBs that (a) seek school facilities project contracts; (b) have been denied credit for such contracts by at least two banks in the State of New Jersey; and (c) have successfully completed an entrepreneurial skills training program established pursuant to Section 7.02, above. Through the SCCAP, the Authority may provide credit for mobilization and working capital for the project, subject to terms to be determined by the Authority.

### **Section 8: Small, minority-owned and women-owned business enterprises**

- 8.01:** Until such time as the New Jersey Commerce and Economic Growth Commission begins certifying ESBs, all of the initiatives, incentives and programs set forth in Sections 5, 6, and 7 above, shall apply to and advance the interests of MBEs, WBEs and SBEs. Subcontracting and set-aside goals shall conform with current law for MBEs at 7 per cent; WBEs at 3 per cent; and SBEs at 15 per cent.
- 8.02:** In the event that the race- and gender- neutral ESB initiatives, incentives and programs set forth in Sections 5, 6, and 7 above do not achieve the MBE, WBE and SBE goals required by State law, the Authority may re-implement, in whole or in part, a race- and gender-based program consistent with State law.

### **Section 9: Sanctions**

- 9.01:** The performance evaluation of a contractor will be negatively affected by noncompliance with the hiring and subcontracting requirements set forth in its contract with the Authority and these procedures.
- 9.02:** The evaluation of proposals submitted by a consultant will be negatively affected by the consultant's noncompliance with the subcontracting requirements set forth in prior contracts with the Authority and these procedures.
- 9.03:** No retainage held by the Authority pursuant to the terms of a contract with a contractor or consultant shall be released by the Authority until the Authority's Director has given written notice as to whether the contractor or consultant has fully complied with the hiring and subcontracting requirements of the contract.
- 9.04:** In consideration for a contractor's or consultant's complete performance of the contract, including total compliance with all of its terms and conditions, the Authority will pay the



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contractor or consultant the full contract price. Compensation for direct and indirect costs associated with satisfying all contractual obligations, including the hiring and subcontracting obligations set forth in the contract, is incorporated in the contract price. Because the Authority cannot and will not pay for contractual services that are not performed or contractual obligations that are not met, the Authority shall reduce the contractor's or consultant's compensation by a maximum of one and a half percent of the contract price if the contractor or consultant does not fully satisfy the hiring and subcontracting requirements set forth in the contract. This reduction in the contract price may be effectuated either by the withholding of all or part of future payments to the contractor or consultant or by a reduction in the amount of retainage otherwise due for release to the contractor or consultant upon contract completion.